

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3706 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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BHAGWANBHAI @ BHAGO GOVINDBHAIPARMAR

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 3706 of 2002
MS DR KACHHAVAH for Petitioner No. 1
MR AY KOGJE Ld. AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/07/2002

ORAL JUDGEMENT

The petitioner-detenu has challenged the legality and validity of the detention order dated 21.2.2002 passed by the District Magistrate, Bhavnagar invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

The detaining authority has branded the petitioner as 'dangerous person' being involved in number of theft cases between 6.1.2001 and 27.8.2001. In all these cases, he was found responsible for cutting and taking away aluminium wires. He was first arrested on 9.11.2001 and after the arrest, it was found out that he has been involved in 7 different such cases registered with Mahuva and Khutwada Police Stations of district Bhavnagar. The last offence of similar type has been registered on 10.2.2002. At present the petitioner is enjoying the bail granted by the competent court.

The subjective satisfaction recorded by the authority is mainly based on three grounds that he has been continuously indulged in similar activities of taking away the aluminium wires which disrupt the public order and he does not have any legitimate economic activity, trade or business and as he has been enlarged on bail by the competent court, some preventive measures were required to be taken and therefore, he has been detained. Ld. counsel appearing for the petitioner Ms. DR Kachchhava has taken me through the memo of petition whereby the petitioner has challenged the legality and validity of the order of continued detention on number of grounds. However, she has mainly focussed her arguments on the point that the concerned District Magistrate has erroneously concluded that the activity of the petitioner is prejudicial to the public order. She has pointed out that the petitioner was caught by a group of police personnel when they were on patrolling and he has been wrongly involved in more number of cases of similar nature. The activity of the petitioner cannot be said to be prejudicial, in any manner, to the public order. Even for the sake of arguments, it is accepted that the petitioner is really involved in all these cases, even than it would a matter of maintenance of law and order and not of public order. She has placed reliance on decision in the case of Ashok Jivraj @ Jivabhai Solanki vs. Police Commissioner, Surat & Ors., reported in 2000(1) GLR p. 860. The ratio of this decision squarely applies to the facts of this case. It is also submitted that in one unreported decision, this Court has quashed the order of detention passed where the detenu was found involved in taking away metal wire. Without going into the merits of this submission, the basic submission of learned counsel for the petitioner shall have to be accepted that the petitioner has been erroneously branded as dangerous person and the alleged activity of the petitioner cannot be said to be prejudicial to the public order. Such events, normally does not create sense of

insecurity or fear or frustration in the minds of the public. It is also not even reflected in the papers served to the detenu that the act of cutting and taking away the aluminium wire had created any disturbed situation for a particular locality or a group of persons. For short, the order under challenge is not sustainable.

In the result, this petition is allowed. The impugned order of detention dated 21.2.2002 passed by the District Magistrate, Bhavnagar is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)

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